

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Regulated Industries

BILL: SB 1216

INTRODUCER: Senator Hutson

SUBJECT: Vacation and Timeshare Plans

DATE: January 20, 2022

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|-----------------|----------------|-----------|------------------|
| 1. | <u>Oxamendi</u> | <u>Imhof</u> | <u>RI</u> | Favorable |
| 2. | _____ | _____ | <u>CA</u> | _____ |
| 3. | _____ | _____ | <u>RC</u> | _____ |

I. Summary:

SB 1216 amends ch. 721, F.S., to revise requirements for vacation and timeshare plans. The bill:

- Exempts timeshare plans from provisions in the Condominium Act in ch. 718, F.S., relating to the creation of timeshare estates in a nonresidential condominium unit.
- Permits the timeshare developer to electronically deliver the public offering statement and required documents for timeshare plans and multisite timeshare plan, with certain conditions.
- Revises the definition for the term “incidental benefits” and eliminates certain requirements for the offering of incidental benefits in the sale of a timeshare plan, including certain disclosures and the limitation on the aggregate represented value of all incidental benefits offered in the sale of a timeshare plan.
- Permits a purchaser of a timeshare plan to assign or transfer an incidental benefit without the approval of the provider of the incidental benefit.
- Revises the requirements for the cancellation of a timeshare plan by clarifying that the term “execution date” refers to the execution date of the contract.
- Extends the period for voiding a contract for which the closing occurred before the expiration of the required cancellation period from one year to five years. Under the bill, the period for voiding a contract for which a prohibited attempt has been made to obtain the waiver of the cancellation right remains one year.
- Expands the definition for the term “advertising material” to include any message, text, picture, video, or other content made available, delivered, or shared electronically through the Internet or any other Internet-based access.
- Exempts electronic advertising materials from required disclosures if such disclosures are given before a purchaser takes any affirmative action pursuant to a promotion.
- Revises the provisions for the termination of timeshare plans to permit the termination of a timeshare plan for an approval percentage level that is lower than 60 percent of all the voting interests if the timeshare instrument provides for a lower percentage.

- Revises the provisions for the resolution of owner disputes related to the allocation of the share of the net proceeds from the disposition of the timeshare property in a termination.
- Permits the board of administration or the members of an owners' association to conduct board meetings or owners' meetings electronically.
- Authorizes the managing entity of a timeshare plan and the board of an owners' association to exercise specified emergency powers in response to an actual or anticipated emergency, as defined in s. 252.34(4), F.S., including, but not limited to, a state of emergency declared by the Governor for the location of the timeshare accommodations or facilities of the timeshare plan. The authorized emergency powers include the conduct of meetings, in whole or in part, by telephone, real-time videoconferencing, or similar real-time electronic or video communication, giving meeting notices electronically, and levying a special assessment without a vote of the owners even if such authority does not specifically appear in the timeshare instrument.
- Permits timeshare estates and timeshare licenses to be offered in a nonspecific multisite timeshare plan.
- Provides for the electronic delivery of required notices in the foreclosure of a mortgage interest or assessment lien.
- Requires the obligor to object to the lienholder's use of the foreclosure procedure for a specific default within 20 days after receipt of the notice of default and intent to foreclose.
- Provides that mediation, a settlement conference, or any other effort to resolve a foreclosure is not required once a default in a judicial foreclosure of an assessment lien or mortgage lien has been issued.

The bill takes effect upon becoming law.

II. Present Situation:

A timeshare interest is a form of ownership of real and personal property.¹ In a timeshare, multiple parties hold the right to use a condominium unit or a cooperative unit. Each owner of a timeshare interest is allotted a period of time (typically one week) during which the owner has the exclusive right to use the property.

The Florida Vacation Plan and Timesharing Act, chapter 721, F.S., establishes requirements for the creation, sale, exchange, promotion, and operation of timeshare plans, including requirements for full and fair disclosure to purchasers and prospective purchasers.² Chapter 721, F.S., applies to all timeshare plans consisting of more than seven timeshare periods over a period of at least three years when the accommodations and facilities are located or offered within this state.³ Part I of chapter 721, F.S., relates to vacation plans and timesharing, and part II of ch. 721, F.S., relates to multisite vacation and timeshare plans that are also known as vacation clubs.

The Division of Florida Condominiums, Timeshares, and Mobile Homes (division) of the Department of Business and Professional Regulation (DBPR) administers ch. 721, F.S.

¹ See s. 721.05(36), F.S.

² Section 721.02(2) and (3), F.S.

³ Section 721.03, F.S.

Definitions

The term “timeshare plan” means any arrangement, plan, scheme, or similar device, other than an exchange program, whether by membership, agreement, tenancy in common, sale, lease, deed, rental agreement, license, or right-to-use agreement or by any other means, where a purchaser, for consideration, receives ownership rights in or a right to use accommodations and facilities, if any, for a period of time less than a full year during any given year, but not necessarily for consecutive years.⁴ The term includes both personal property timeshare and real property timeshare plans.⁵

Each timeshare plan must have a managing entity that must be the developer, a separate manager or management firm, or an owners’ association. The managing entity operates or maintains the timeshare plan.⁶

A timeshare unit is an accommodation of a timeshare plan which is divided into timeshare periods or a condominium unit in which timeshare estates have been created.⁷

A “timeshare estate” is a right to occupy a timeshare unit, coupled with a freehold estate or an estate for years with a future interest in a timeshare property or a specified portion thereof.⁸ The term also includes an interest in a condominium unit, a cooperative unit, or a trust. Whether the term includes both direct and indirect interests in trusts is not specified. An example of an indirect interest in a trust is the interest of a trust beneficiary’s spouse or other dependent.

A “timeshare license” is the right to occupy a timeshare unit, which right is not a personal property timeshare interest or a timeshare estate.⁹ A “timeshare interest” is a timeshare estate, a personal property timeshare interest, or a timeshare license.¹⁰

III. Effect of Proposed Changes:

For ease of reference to each of the topics addressed in the bill, the Present Situation for each topic will be described in Section III of this analysis, followed immediately by an associated section detailing the Effect of Proposed Changes.

Scope of Chapter 721, F.S. – Exemption

Present Situation

A timeshare plan is subject to chs. 718 and 719, F.S., relating to condominium and cooperative associations, respectively. However, if the plan is compliant with ch. 721, F.S., it is exempt from

⁴ Section 721.05(39), F.S.

⁵ A “personal property timeshare plan,” is a timeshare plan in which the accommodations are comprised of personal property that is not permanently affixed to real property. s. 721.05(39)(a) F.S. A “real property timeshare plan,” is a timeshare plan in which the accommodations of the timeshare plan are comprised of or permanently affixed to real property.

Section 721.05(39)(b), F.S.

⁶ Section 721.13(1)(a), F.S. The duties of a managing entity are detailed in s. 721.13(3), F.S.

⁷ See ss. 721.05(41) and 718.103(26), F.S.

⁸ Section 721.05(34), F.S.

⁹ Section 721.05(37), F.S.

¹⁰ Section 721.05(36), F.S.

certain provisions of chs. 718 or 719, F.S., including provisions relating to sales or reservation deposits prior to closing, disclosures prior to sale, and conversions to condominiums or cooperatives.¹¹

Section 718.104(4)(o), F.S., requires the declaration of condominium, which is the instrument that creates a condominium,¹² to provide, if timeshare estates will or may be created with respect to any unit in the condominium, a statement in conspicuous type declaring that timeshare estates will or may be created with respect to units in the condominium. The declaration of condominium must also define and describe in detail the degree, quantity, nature, and extent of the timeshare estates that will or may be created.

Section 718.1045, F.S., provides that no timeshare estates may be created with respect to any condominium unit except pursuant to provisions in the declaration expressly permitting the creation of such estates.

Section 718.110(8), F.S., relating to amending the declaration of condominium, to prohibit, unless otherwise provided in the declaration as originally recorded, an amendment to the declaration to create timeshare estates in any unit of the condominium, unless the record owner of each unit of the condominium and the record owners of liens on each unit of the condominium join in the execution of the amendment.

Effect of Proposed Changes

The bill amends s. 721.03(3), to exempt timeshare plans from ss. 718.104(4)(o), 718.1045, and 718.110(8), F.S., relating to the creation of timeshare estates in a nonresidential condominium unit.

Public Offering Statement

Present Situation

Section 721.07, F.S., requires a developer to submit to the division a public offering statement before any timeshare plan is offered for sale. The division must prescribe the form of the public offering statement and approve the public offering statement before it is delivered to prospective purchasers.¹³

The public offering statement must contain a statement in conspicuous type informing the purchaser of a timeshare plan of their statutory right to cancel their purchase contract before midnight of the 10th calendar day following the date the purchaser signed the purchase contract, the date on which the purchaser received the last of all documents required to be given pursuant to s. 721.07(2)(d)2., F.S., or 10 calendar days after the purchaser receives any required revisions, whichever is later.¹⁴ Section 721.07(6), F.S., also specifies the documents that must be furnished to each purchaser of a timeshare plan.

¹¹ See s. 721.03(3), F.S.

¹² Section 718.103(15), F.S.

¹³ Section 721.07(6), F.S.

¹⁴ See also s. 719.10, F.S., providing for a 10-day cancellation period.

Effect of Proposed Changes

The bill amends s. 721.07(6), F.S., to allow a developer to provide each purchaser of the timeshare plan with the approved public offering statement electronically instead of in a fully executed paper copy. Electronic delivery of the public offering statement may be done through a website or other Internet-based access, if the developer discloses to the purchaser the system requirements necessary to view the approved public offering statement and advises the purchaser to not select an alternative method of receiving the approved public offering statement unless he or she is able to review the approved public offering statement before the expiration of the 10-day cancellation period under s. 721.10, F.S.

Under the bill, s. 721.07(6), F.S., is amended to permit the documents that must be furnished to each purchaser of a timeshare plan to be furnished electronically through a website or other Internet-based access.

The bill amends s. 721.551, F.S., to correct cross-references to s. 721.07(6)(c)1., F.S., as amended by the bill.

Incidental Benefits

Present Situation

Section 721.075, F.S., permits the offering of specified incidental benefits to purchasers of timeshare interests under specified circumstances. The term “incidental benefit” means:¹⁵

...an accommodation, product, service, discount, or other benefit which is offered to a prospective purchaser of a timeshare plan or to a purchaser of a timeshare plan prior to the expiration of his or her initial 10-day voidability period pursuant to s. 721.10[, F.S.]; which is not an exchange program as defined in [s. 721.05(16), F.S.]; and which complies with the provisions of s. 721.075[, F.S.] The term shall not include an offer of the use of the accommodations and facilities of the timeshare plan on a free or discounted one-time basis.

Examples of incidental benefits would be exchange rights, travel insurance, bonus weeks, referral awards, and golf and tennis packages.¹⁶

Incidental benefits are subject to required disclosures and restriction, including a limit on the aggregate represented value of all incidental benefits offered by a developer to a purchaser of not more than 15 percent of the purchase price paid by the purchaser for his or her timeshare interest. The incidental benefits must be filed with the division for review in conjunction with the filing of a timeshare plan or in connection with a previously filed timeshare plan.¹⁷

¹⁵ Section 721.05(19), F.S.

¹⁶ See <https://www.lawinsider.com/dictionary/incidental-benefit#:~:text=Incidental%20benefit%20means%20an%20accommodation,voidability%20period%20pursuant%20to%20s.> (last visited Jan. 23, 2022).

¹⁷ Section 721.075(2), F.S.

In addition, each purchaser of a timeshare plan must execute a separate acknowledgment and disclosure statement with respect to all incidental benefits. The acknowledgment and disclosure statement must include certain information, including a statement that:¹⁸

- Explains the use of or participation in the incidental benefit by the prospective purchaser is completely voluntary, and that payment of any fee or other cost associated with the incidental benefit is required only upon such use or participation;
- Indicates the source of the services, points, or other products that constitute the incidental benefit; and
- Explains that the incidental benefit is not assignable or otherwise transferable by the prospective purchaser or purchaser.

The acknowledgement and disclosure statement must be filed with the division prior to use.¹⁹

The developer must promptly notify the division upon learning of the unavailability of any incidental benefit.²⁰

Effect of Proposed Changes

The bill amends s. 721.075, F.S., to eliminate certain requirements for the offering of incidental benefits in the sale of a timeshare plan.

Sections 721.075(1)(a) and (2)(b), F.S., are amended by the bill to delete the condition that payment of any fee or other cost associated with the incidental benefit is required only upon use or participation.

Section 721.075(1)(f), F.S., is amended to delete the limitation on the aggregate represented value of all incidental benefits.

Section 721.075(1)(g), F.S., is amended to delete the requirement that incidental benefits be filed with the division for review.

Section 721.075(2)(c), F.S., is amended to permit a purchaser to assign or transfer the incidental benefit without the approval of the provider of the incidental benefit.

Section 721.075(2)(e), F.S., is amended to delete the requirement for an acknowledgement and disclosure statement indicating the source of the services, points, or other products that constitute the incidental benefit. Section 721.075(2)(e), F.S., is also amended to remove the requirement that the acknowledgement and disclosure statement for any incidental benefit be filed with the division.

Section 721.075(3)(a), F.S., is amended to remove the requirements that the developer promptly notify the division upon learning of the unavailability of any incidental benefit.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ Section 721.075(3)(a), F.S.

Cancellations

Present Situation

Section 721.10, F.S., provides for the cancellation of a timeshare plan contract by the purchaser before midnight of the 10th calendar day following the date of the execution, the date on which the purchaser received the last of all documents required to be given pursuant to s. 721.07(2)(d)2., F.S., or 10 calendar days after the purchaser received any required revisions, whichever is later.

It is unlawful to attempt to obtain a waiver of the cancellation right of the timeshare purchaser, or to hold the closing prior to the expiration of the cancellation period. Such closing is voidable at the option of the purchaser for a period of one year after the expiration of the cancellation period.

Effect of Proposed Changes

The bill amends s. 721.10(1)(a), F.S., to clarify the meaning of the term “execution date” to refer to the execution date of the contract.

The bill amends s. 721.10(2), F.S., to provide that the waiver of a cancellation right that is made knowingly or unknowingly is prohibited. The bill extends the period for voiding a contract for which the closing occurred before the expiration of the cancellation period from one year to five years. Under the bill, the period for voiding a contract for which an attempt has been made to obtain the waiver of the cancellation right remains one year.

Advertising Materials

Present Situation

Section 721.11, F.S., provides for the regulation of advertising materials used in connection with the sale of a timeshare plan. The term “advertising material” includes a variety of materials and advertising methods, including promotional brochures, pamphlets, and radio and television advertisements.²¹

Section 721.11(5)(a), F.S., requires all written advertising material, including any lodging certificate, gift award, premium, discount, or display booth, to provide a disclosure in conspicuous type in substantially the following form:

This advertising material is being used for the purpose of soliciting sales of timeshare interests; or This advertising material is being used for the purpose of soliciting sales of a vacation (or vacation membership or vacation ownership) plan.

The division may approve the use of an alternate disclosure. This conspicuous disclosure must be provided before the purchaser is required to take any affirmative action pursuant to the promotion.

²¹ See s. 721.11(2), F.S.

Effect of Proposed Changes

The bill amends s. 721.11(5)(a), F.S., to expand the definition for the term “advertising material” to include any message, text, picture, video, or other content made available, delivered, or shared electronically through the Internet or any other Internet-based access. The bill exempts such electronic advertising materials from the disclosure under s. 721.11(5), F.S., if such disclosures are given before a purchaser takes any affirmative action pursuant to a promotion.

Termination of Timeshare Plans***Present Situation***

Section 721.125, F.S., provides for termination of timeshare plans upon the vote or written consent of 60 percent of all the voting interests in the timeshare plan.

After termination of a timeshare plan, the board of administration of the owners’ association (board) serves as the termination trustee. In that fiduciary capacity, the board may bring a partition action on behalf of the tenants in common in each former timeshare property, or may sell the former timeshare property in any manner and to any person approved by a majority of all the tenants in common. The termination trustee also has all other powers reasonably necessary to accomplish the partition or sale, including the power to maintain the property while the partition action or sale is pending, and must adopt reasonable procedures to implement the partition or sale and comply with these requirements.²²

All reasonable expenses incurred by the termination trustee relating to the performance of the trustee’s duties, including reasonable fees of attorneys and other professionals, must be paid by the tenants in common, in proportion to their ownership interests.²³

The termination trustee may adopt reasonable procedures to implement the partition or sale of the former timeshare property and comply with the requirements of s. 721.125, F.S., for the termination of a timeshare plan.

The timeshare plan termination provisions in s. 721.125, F.S., apply to timeshare plans that have been in existence for at least 25 years as of the effective date of the termination vote or consent required by s. 721.125(1), F.S.

Effect of Proposed Changes

The bill amends s. 721.125, F.S., to revise the provisions for the termination of timeshare plans.

The bill provides a statement of legislative intent for the need to provide for the termination of timeshare plans. Under the bill, the termination of a timeshare plan may be approved with a percentage that is lower than 60 percent of all the voting interests if the timeshare instrument provides for a lower percentage.

²² Section 721.125(3)(a)1., F.S.

²³ Section 721.125(3)(a)2., F.S.

The bill permits a voting representative to approve a termination trustee's bringing of a partition action on behalf of the tenants in common in each former timeshare property or sale of the former timeshare property. Current law only provides for the approval by a majority of all the tenants in common. The bill and ch. 721, F.S., do not define the term "voting representative."

The bill requires any unpaid assessments, taxes, late fees, interest, fines, charges, or other amounts due and owing to the managing entity²⁴ by an owner of a timeshare interest to be set off against, and reduce the share of, the net proceeds from the disposition of the timeshare property that are allocated to such owner.

Section 721.125(4)(g), F.S., provides that, if an owner disputes the allocated share of the net proceeds from the disposition of the timeshare property, the trustee "may file an interpleader action in circuit court and deposit the disputed funds into the court registry, at which time the timeshare property and the proceeds distributed pursuant to a disposition of the timeshare property are free of all claims and liens of the parties to the interpleader action."²⁵

Section 718.117(17)(b), F.S., provides a comparable provision for the filing of an interpleader by the termination trustee for a condominium in the event there is a dispute about the distribution of funds or property.

Under the bill, the prevailing party in the interpleader action may recover reasonable attorney fees and costs from the nonprevailing party.

The bill amends s. 721.125, F.S., to apply the termination procedures to all a timeshare plans in the state in existence on or after July 1, 2022, provided that the timeshare plan has been in existence for at least 25 years as of the effective date of the termination of the timeshare plan. It deletes the provision from which the 25 years of existence is calculated based on the date of the vote or consent required by s. 721.125(1), F.S.

Management of a Timeshare Plan

Present Situation

Section 721.13, F.S., requires the developer to provide a managing entity for each timeshare plan. The managing entity may be the developer, a separate manager or management company, or an owners' association.

Effect of Proposed Changes

The bill creates s. 721.13(14)(a), F.S., to prohibit a managing entity from sending notices that are required to be sent to the owner of a timeshare interest pursuant to chs. 718, 719, or 721, F.S., to the address of the owner's timeshare unit or timeshare plan.

²⁴ Section 721.05(22), F.S., defines the term "managing entity" to mean the person who operates or maintains the timeshare plan pursuant to s. 721.13(1), F.S.

²⁵ The term "interpleader" means: "1. (Of a claimant) to assert one's own claim regarding property or an issue already before the court. 2. (Of a stakeholder) to institute an interpleader action, [usually] by depositing disputed property into the court's registry to abide the court's decision about who is entitled to the property." *Black's Law Dictionary*, 11th Ed. Thomson Reuters (2019).

The bill creates s. 721.13(14)(b), F.S., to permit the board of administration or the members of an owners' association to conduct board meetings or owners' meetings electronically.

Managing Entity Emergency Powers

Present Situation

Sections 718.1265, 719.128, and 720.316, F.S., provide for the exercise of emergency powers by the boards of condominium, cooperative, and homeowners' associations, respectively, in response to injury and to an anticipated declared state of emergency. The emergency powers for these association boards include provisions for the conduct meetings and elections, in whole or in part, by telephone, real-time videoconferencing, or similar real-time electronic or video communication, and for the giving of meeting notices by electronic transmission.

Chapter 721, F.S., does not provide a comparable emergency authority for the managing entity of a timeshare plan.

Effect of Proposed Changes

The bill creates s. 721.131, F.S., to authorize the managing entity of a timeshare plan and the board of an owners' association to exercise emergency powers in response to an actual or anticipated emergency, as defined in s. 252.34(4), F.S., including, but not limited to a state of emergency declared by the Governor for the location of the timeshare accommodations or facilities of the timeshare plan. The authorized emergency powers include:

- The conduct of board of administration and owners' meetings, in whole or in part, by telephone, real-time videoconferencing, or similar real-time electronic or video communication;
- Giving meeting notices electronically;
- Cancelling and rescheduling any board of administration and owners' meeting;
- Naming assistant officers who shall have the same powers as executive officers of the association with the same authority as the officers they are assisting;
- Relocating the managing entity's principal office or designate alternative principal offices;
- Entering into agreements with local government for assistance;
- Implementing an emergency plan;
- Determining that all or any portion of the timeshare property is unavailable for entry, use, or occupancy;
- Requiring the evacuation of the timeshare property, and providing immunity to the managing entity if any owner or other occupant fails or refuses to evacuate the property;
- Determining if all or a portion of the timeshare property, including recreational and other accommodations or facilities, may be safely used, inhabited, or occupied, and whether all or a portion of such property needs to be closed for a period of time;
- Mitigating further damage;
- Contracting for items or services for which owners are otherwise individually responsible when necessary, but the owner or owners on whose behalf the managing entity has contracted are responsible for reimbursing the managing entity;

- Levying a special assessment without a vote of the owners even if such authority does not specifically appear in the timeshare instrument;
- Borrowing money and pledging association assets without a vote of the unit owners;
- Issuing emergency rules regarding the operation of the reservations systems, and modifying or suspending rights to use the timeshare property and the one-to-one right to use requirement;
- Transferring funds in any deferred maintenance or capital expenditure reserve account to any operating account without the consent of a majority of the purchasers of the timeshare plan; and
- Taking any other actions reasonably necessary to protect the health, safety, and welfare of the managing entity and the owners and the owners' family members, tenants, guests, agents, invitees, exchangers, and other occupants or to protect the timeshare property.

The emergency powers are limited to that time and scope necessary to reasonably protect the health, safety, and welfare of the association, the owners, and other persons, to mitigate further damage, and to make emergency repairs.

Vacation Club Definitions

Present Situation

Section 721.52(5), F.S., defines the term “nonspecific multisite timeshare plan” to mean:

...a multisite timeshare plan with respect to which a purchaser receives a right to use all of the accommodations and facilities, if any, of the multisite timeshare plan through the reservation system, but no specific right to use any particular accommodations and facilities for the remaining term of the multisite timeshare plan in the event that the reservation system is terminated for any reason prior to the expiration of the term of the multisite timeshare plan.

Section 721.05(34), F.S., defines the term “timeshare estate” to mean a right to occupy a timeshare unit, coupled with a freehold estate or an estate for years with a future interest in a timeshare property or a specified portion thereof, or coupled with an ownership interest in a condominium unit, an ownership interest in a cooperative unit, or a direct or indirect beneficial interest in certain trusts, provided that the trust does not contain any personal property timeshare interests. A timeshare estate is a parcel of real property.

Section 721.05(37), F.S., defines the term “timeshare license” to mean a right to occupy a timeshare unit, which right is not a personal property timeshare interest²⁶ or a timeshare estate.

Section 721.57, F.S., which provides for the offering of timeshare estates in a “specific multisite plan.”²⁷ A specific multisite plan must meet all of the criteria of s. 721.57(2), F.S. Any offering

²⁶ Section 721.05(28), F.S.

²⁷ Section 721.52(7), F.S., defining the term “specific multisite plan.”

that does not comply with these requirements is deemed to be an offering of a timeshare license.²⁸

Section 721.05(34), F.S., defines the term “timeshare estate,” as a parcel of real property. Pursuant to s. 721.57(2)(b)2., F.S., the use rights to the real property, i.e., a timeshare estate, continue in the event the reservation system is terminated or otherwise becomes unavailable for any reason prior to the expiration of the term of the specific multisite timeshare plan.

Effect of Proposed Changes

The bill amends s. 721.52(5), F.S., to provide that timeshare estates or timeshare licenses may be offered in a nonspecific multisite timeshare plan.

Multisite Timeshare Plan Public Offering Statement

Present Situation

Section 721.55, F.S., requires a public offering statement for a multisite timeshare plan to contain certain information and disclosures. In relevant part, s. 721.55(4)(l), F.S., requires the public offering statement to contain a description of each component site, which description may be disclosed in a written, graphic, tabular, or other form approved by the division. In addition, the description of each component site must include certain information, including the each type of accommodation in terms of the number of bedrooms, bathrooms, sleeping capacity, and whether or not the accommodation contains a full kitchen. For purposes of this description, a full kitchen means a kitchen having a minimum of a dishwasher, range, sink, oven, and refrigerator.

Section 721.55(7), F.S., requires specified documents to be included as exhibits to the filed public offering statement, if applicable, including an estimated budget for the timeshare plan and purchaser’s expenses as required by the jurisdiction in which the component site is located.

Effect of Proposed Changes

The bill amends s. 721.55(4)(l), F.S., permit the disclosure of the information described in this provision to be provided to the purchaser electronically, including, but not limited to, through a website or other Internet-based access.

The bill amends s. 721.55(7), F.S., to provide that a developer is not required to file a separate public offering statement for any component site located within or outside the state in order to include the component site in the multistate timeshare plan.

Foreclosures

Present Situation

Part III of ch. 721, F.S., consisting of ss. 721.80 through 721.86, F.S., relate to the foreclosure of liens on timeshare interests.

²⁸ Section 721.57(1), F.S.

Section 721.82(11), F.S., defines the term “permitted delivery service” to mean “any nationally recognized common carrier delivery service, international airmail service that allows for return receipt service, or a service recognized by an international jurisdiction as the equivalent of certified, registered mail for that jurisdiction.”

Section 721.85, F.S., provides that the service of process for a foreclosure proceeding for assessment liens may be made on any person whether the person is located inside or outside this state, by certified mail, registered mail, permitted delivery service, return receipt requested, addressed to the person to be served at the notice address, or on the person’s registered agent duly appointed under s. 721.84, F.S., at the registered office.

In the foreclosure process for assessment liens, s. 721.855(3), F.S., permits the obligor to object to the lienholder's use of the trustee foreclosure procedure for a specific default any time before the sale of the timeshare interest.

The foreclosure trustee must send the obligor a written notice of default and intent to foreclose the assessment lien to the notice address of the obligor by certified mail, registered mail, or permitted delivery service, return receipt requested, and by first-class mail, postage prepaid.

Section 721.856, F.S., provides comparable provisions for the trustee foreclosure of mortgage liens.

Effect of Proposed Changes

The bill amends the definition for the term “permitted delivery service” in s. 721.82(1)(b), F.S., to mean delivery to an e-mail address, if provided by the obligor, with evidence that the lienholder received the e-mail. The revised definition also provides that permitted delivery service is only authorized for obligors who reside outside the United States. The bill deletes the current definition for the term. The bill amends s. 721.85, F.S., to clarify the use of permitted delivery service.

The bill also amends s. 721.855, F.S., relating to the foreclosure of assessment liens, and s. 721.856, F.S., relating to the foreclosure of mortgage liens, to provide identical service and notice requirements for the trustee’s foreclosure of a mortgage interest or assessment lien.

The bill amends ss. 721.855(1)(b) and 721.856(5)(a), F.S., to permit, if applicable, service of process by “preferred delivery service,” as redefined by the bill.

The bill amends s. 721.855(3) and 721.856, F.S., to require the obligor to object to the lienholder's use of the trustee foreclosure procedure for a specific default within 20 days after receipt of the notice of default and intent to foreclose required under s. 721.855(5), F.S., or s. 721.856(5), as applicable.

The bill amends the statutory notices in ss. 721.855(5)(a)3. and 721.856(5)(a)3., F.S., that must be included in the notice of default and intent to foreclose to reference the 20-day response period. Sections 721.855(5)(a) and 721.856(5)(a), F.S., are also amended to require the obligor to

object to the lienholder's use of the trustee foreclosure procedure for a specific default within 20 days of after receipt of the notice of default and intent to foreclose.

The bill amends ss. 721.855(5)(a) and 721.856(5)(a), F.S., to permit, if applicable, service of the foreclosure trustee's notice of default and intent to foreclose by "preferred delivery service," as redefined by the bill.

Sections 721.855(5)(a) and 721.856(5)(b), F.S., are amended by the bill to delete the provisions providing that service of the foreclosure trustee's notice of default and intent to foreclose is not perfected if the trustee cannot, in good faith, ascertain the person who signed the receipt because all or a portion of the obligor's or person's name is not on the signed receipt or because the trustee cannot otherwise determine that the obligor or junior interest holder signed the receipt.

The bill amends ss. 721.855(6) and 721.856(6), F.S., to permit, if applicable, service of the foreclosure trustee's copy of the notice of sale by "preferred delivery service," as redefined by the bill.

Sections 721.855(14) and 721.856(13), F.S., are amended by the bill to delete the provisions that exempt a trustee from violations of these sections if the trustee incorrectly ascertains that the obligor signed the return receipt for delivery of the notice of default and intent to foreclose if the trustee made a good faith effort to properly ascertain that the obligor signed the return receipt as required by these sections.

The bill creates s. 721.86(5), F.S., to provide that mediation, a settlement conference, or any other effort to resolve a foreclosure is not required once a default in a judicial foreclosure of an assessment lien or mortgage lien has been issued.

Effective Date

The bill takes effect upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill amends s. 721.52(5), F.S., to provide that timeshare estates or timeshare licenses may be offered in a nonspecific multisite timeshare plan. The division interprets current law to permit timeshare estates to be offered only in a specific multisite timeshare plan pursuant to s. 721.57, F.S., which permits the offering of timeshare estates in a “specific multisite plan.”²⁹ The division represents that the bill may conflict with provisions in ss. 721.05(34),³⁰ 721.52(4)(b)³¹ and 721.57, F.S.,³² that are not amended by the bill.³³

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 721.03, 721.07, 721.075, 721.10, 721.11, 721.125, 721.13, 721.52, 721.55, 721.551, 721.82, 721.85, 721.855, 721.856, 721.86, 721.09, and 721.111.

This bill creates section 721.131 of the Florida Statutes.

²⁹ Section 721.52(7), F.S., defining the term “specific multisite plan.”

³⁰ Section 721.05(34), F.S., defines the term “timeshare estate” as a timeshare estate is a parcel of real property.

³¹ Section 721.57(4)(b)2., F.S., the use rights to the real property, i.e., a timeshare estate, continue in the event the reservation system is terminated or otherwise becomes unavailable for any reason prior to the expiration of the term of the specific multisite timeshare plan.

³² Section 721.57, F.S., providing for the offering of timeshare estates in specific timeshare plans.

³³ See DBPR, *2022 Agency Legislative Bill Analysis for SB 575*, p. 4 (Dec. 7, 2021) on file with the Regulated Industries Committee.

IX. Additional Information:

- A. **Committee Substitute – Statement of Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

- B. **Amendments:**

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
